

CONCHITA E. LOZANO-BATISTA, Bar No. 227227
KRISTINA M. ZINNEN, Bar No. 245346
CRAIG SCHECHTER, Bar No. 308968
KARA L. GORDON, Bar No. 333379
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1375 55th Street
Emeryville, California 94608
Telephone (510) 337-1001
Fax (510) 337-1023
E-Mail: courtnotices@unioncounsel.net
clozano@unioncounsel.net
kzinnen@unioncounsel.net
cschechter@unioncounsel.net
kgordon@unioncounsel.net

Attorneys for Plaintiffs

ORY CROSS, Bar No. 250471
VALOR LEGAL, PC
2010 Crow Canyon Place, Suite 100
San Ramon, California 94583
Telephone (415) 545-8394
Email: ocross@valorlegal.com

Attorneys for Defendant
T AND S DVBE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE BOARD OF TRUSTEES, in their
capacities as Trustees of the LABORERS
HEALTH AND WELFARE TRUST FUND
FOR NORTHERN CALIFORNIA;
LABORERS VACATION-HOLIDAY TRUST
FUND FOR NORTHERN CALIFORNIA;
LABORERS PENSION TRUST FUND FOR
NORTHERN CALIFORNIA; and LABORERS
TRAINING AND RETRAINING TRUST
FUND FOR NORTHERN CALIFORNIA,

Plaintiffs,

v.

T AND S DVBE, INC., a California
Corporation,

Defendant.

No. 3:21-cv-05582-JSC

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: October 21, 2021
Time: 1:30 P.M.
CrtRm: E, 15th Floor
MJudge: Honorable Jaqueline Scott Corley

Complaint Filed: July 21, 2021

Pursuant to Civil Local Rules 7-12 and 16-2, Plaintiffs, The Board of Trustees, in their capacities as Trustees of the Laborers Health and Welfare Trust Fund for Northern California; Laborers Vacation-Holiday Trust Fund for Northern California; Laborers Pension Trust Fund for Northern California; and Laborers Training and Retraining Trust Fund for Northern California (“Trust Funds” or “Plaintiffs”), by and through their counsel, and Defendant T AND S DVBE, INC., a California corporation (“DVBE” or “Defendant”), by and through the undersigned counsel, hereby submit this Joint Case Management Conference Statement.

1. Jurisdiction and Service

This case was filed on July 21, 2021. (Dkt. No. 1). Defendant was served with the Summons and Complaint on July 27, 2021. (Dkt. No. 7). Defendant filed a Response to Complaint on August 17, 2021. (Dkt. No. 8). This Court has jurisdiction based on Section 502 of the Employee Retirement Income Security Act (“ERISA”) (29 U.S.C. § 1132) and Section 301 of the Labor Management Relations Act (“LMRA”) (29 U.S.C. § 185).

2. Facts and Claims Asserted

PLAINTIFFS’ POSITION:

Plaintiffs are suing Defendant T & S DVBE, Inc., a contributing employer, to collect sums that Plaintiffs contend are owed pursuant to an audit of DVBE’s books and records conducted by the Plaintiffs to confirm that all trust fund contributions had been timely and fully paid; to collect liquidated damages and interest; to collect attorneys’ fees and costs; and to obtain an injunction for an additional audit.

Plaintiffs are Trustees of the Laborers Trust Funds. The Trust Funds were, and are, employee benefit plans created by written Trust Agreements subject to and pursuant to Section 302 of the LMRA (29 U.S.C. § 186), and multi-employer employee benefit plans within the meaning of Sections 3, 4 and 502 of ERISA (29 U.S.C. §§ 1002, 1003 and 1132). The Board of Trustees has, as one of their purposes, the obligation to ensure that contributions required to be made to the Trust Funds pursuant to collective bargaining agreements are fully and correctly made. The purpose of the respective Trust Funds is to provide health and welfare, vacation, pension and other benefits for laborers on whose behalf contributions are made, which benefits

1 are supported by such contributions, and to ensure that employers who are signatories to the
 2 collective bargaining agreement referred to herein comply with the terms of said agreement with
 3 respect to payments of said contributions to the Trust Funds.

4 At all relevant times, DVBE was signatory and bound to a written collective bargaining
 5 agreement with the Northern California District Council of Laborers (“Union”), a labor
 6 organization within the meaning of section 301 of the LMRA (29 U.S.C. § 185). DVBE became
 7 subject to all the terms and conditions of the Laborers Master Agreements (hereinafter “Master
 8 Agreements”) by virtue of signing a Memoranda of Agreement (hereinafter “MOU”). In
 9 addition, DVBE is signatory to subcontract agreements with contractors who are signatory and
 10 bound to the Master Agreements. The Master Agreements incorporate the various Trust
 11 Agreements establishing each of the Plaintiffs Trust Funds. DVBE is a contractor and employer
 12 within the meaning of the LMRA and ERISA. Pursuant to the Collective Master Agreements and
 13 Trust Agreements, DVBE was obligated to make contributions to Plaintiff Trust Funds for all
 14 hours worked by or paid to members of the Laborers Union, and obligated to submit to periodic
 15 audits.

16 An audit of Defendant’s books and records covering the time period 2015 to 2019 (“Audit
 17 Period”) was conducted. The audit results were forwarded to Defendant. Plaintiffs contend the
 18 audit revealed that Defendant failed to pay contributions owed to the Trust Funds in the amount
 19 of \$206,581.62, and related liquidated damages and interest in the amount of at least \$202,352.15
 20 based upon covered work performed by its employees during the Audit Period. To date, DVBE
 21 failed to pay the aforementioned audit liability.

22 On July 21, 2021, Plaintiffs filed a Complaint to collect the amounts owed by Defendant
 23 based upon the compliance audit and to obtain an additional compliance audit for 2019 to date.
 24 Defendant filed its Response to Plaintiffs’ Complaint on August 17, 2021.

25 The principle factual issue in dispute is whether DVBE is liable for the alleged audit
 26 liability.

27 **DEFENDANT’S POSITION:**

28 Defendant is a signatory to the Northern California Laborers Memorandum Traffic

Control Highway Improvement Agreement. While Defendant does not dispute that monies may be owed, Defendant does dispute the amount owed, as well as the timing and calculations used by Plaintiff in reaching the claimed amount. Defendant does not oppose an audit from 2019 to end of 2020, in fact, Defendants Vice-President made said suggestion to Plaintiff's counsel last year.

3. Legal Issues

PLAINTIFFS' POSITION:

The Claims in this case are for actual damages under the Employment Retirement Income Security Act of 1974 ("ERISA"); actual damages under the Labor Management Relations Act ("LMRA"); an audit pursuant to the Agreements and an injunction under the LMRA. Plaintiffs seek payment by Defendant of: (1) audit liability including contributions owed to the Trust Funds in the amount of \$206,581.62, and related liquidated damages and interest in the amount of at least \$202,352.15 based upon covered work performed by its employees during the Audit Period; and (2) their attorneys' fees and costs according to proof. Plaintiffs also seek an injunction for an audit of Defendant's books and records covering the time period 2019 to date. The relief sought is supported by ERISA and the Agreements to which Defendant is signatory. The claims are governed by ERISA Section 501 *et seq.* (29 U.S.C. § 1001 *et seq.*).

DEFENDANT'S POSITION:

Defendant is a signatory to the Northern California Laborers Memorandum Traffic Control Highway Improvement Agreement. While Defendant does not dispute that monies may be owed, Defendant does dispute the amount owed, as well as the timing and calculations used by Plaintiff in reaching the claimed amount.

4. Motions

There are no pending motions.

5. Amendment of Pleadings

Plaintiffs do not anticipate that the pleadings will be amended. Defendant at this early juncture does not have a position on whether the amendment(s) of pleadings is necessary.

6. Evidence Preservation

Plaintiffs have taken all necessary steps to preserve evidence relevant to this action.

Defendant has of course taken all steps necessary to preserve evidence related to this action.

7. Disclosures

The parties have not served their initial disclosures, but will do so prior to the Case Management Conference set for October 21, 2021.

8. Discovery

No discovery has been conducted. Plaintiffs anticipate that this case will be decided by summary judgment motions following limited discovery.

9. Class Actions

This is not a class action.

10. Related Cases

Plaintiffs are not aware of any related cases. Defendant as well is not aware of any related cases.

11. Settlement and ADR

Plaintiffs are amenable to mediation through the Court's ADR Program. Defendant as well is amenable to mediation, through the Court's ADR Program.

12. Consent to Magistrate Judge For All Purposes

The parties have consented to proceed before a Magistrate Judge for all purposes including trial.

13. Other References

Plaintiffs do not believe the case is appropriate for binding arbitration, reference to a Special Master, or the Judicial Panel on Multidistrict Litigation. Defendant do not believe the case is appropriate for binding arbitration, reference to a Special Master, or the Judicial Panel on Multidistrict Litigation.

14. Narrowing of Issues

Plaintiffs are not aware of any opportunities to narrow issues. Defendant is not aware of any opportunities to narrow issues.

15. Scheduling

Plaintiffs believe this matter can be decided on summary judgment motions, following

limited discovery. Plaintiffs request that this matter be set for trial in January 2023 to allow the parties to conduct discovery and file dispositive motions. Defendant would request the date of March 2023 for trial.

16. Expedited Schedule

Plaintiffs do not believe this matter is appropriate for an expedited schedule or streamlined procedures. Defendant concurs.

17. Trial

Were this case to proceed to trial, Plaintiffs request a two day bench trial, set for January 2023. Defendant would request the date of March 2023 for trial.

18. Disclosure of Non-Party Interested Entities or Persons

Plaintiffs are not aware of any non-party entities to report. Defendant is not aware of any non-party entities to report.

PLAINTIFFS:

Concepción E. Lozano-Batista
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1375 55th Street
Emeryville, California 94608
Telephone: (510) 337-1001
Fax: (510) 337-1023
E-Mail: clozano@unioncounsel.net

DEFENDANT:

Ory Cross
VALOR LEGAL, PC
2010 Crow Canyon Place, Suite 100
San Ramon, California 94583
Telephone: (415) 545-8394
Email: ocross@valorlegal.com

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1 Dated: October 14, 2021

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

2
3 By: /s/ Concepcion E. Lozano-Batista
CONCEPCION E. LOZANO-BATISTA
4 KRISTINA M. ZINNEN
5 CRAIG SCHECHTER
KARA L. GORDON

6 Attorneys for Plaintiffs

7
8 Dated: October 14, 2021

VALOR LEGAL, PC

9
10 By: /s/ Ory Cross
ORY CROSS

11 Attorneys for Defendant
12 T AND S DVBE, INC.

13 150432\1213231

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Emeryville, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1375 55th Street, Emeryville, California 94608.

I hereby certify that on October 14, 2021, I electronically filed the forgoing Joint Case Management Conference Statement with the United States District Court, Northern District of California, San Francisco Division, by using the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct. Executed at Emeryville, California, on October 14, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by CM/ECF system.

/s/ Maria D. Aranda
MARIA D. ARANDA